

The Honorable Richard A. Jones

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JANE SULLIVAN and P. POES 1-75,
individually and on behalf of others
similarly situated,

Plaintiffs,

v.

THE UNIVERSITY OF WASHINGTON, a
Washington public corporation; ELIZA
SAUNDERS, Director of Public Records
and Open Public Meetings at the University
of Washington, in their official capacity,

Defendants,

and

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., a
Virginia nonstock corporation,

Intervenor-Defendant.

Case No. 2:22-cv-00204-RAJ

**DECLARATION OF KATHY
GUILLERMO IN SUPPORT OF
INTERVENOR-DEFENDANT
PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

I, Kathy Guillermo, declare as follows:

1. I am a senior vice president of laboratory investigations for People for the Ethical Treatment of Animals, Inc. ("PETA"). I have personal knowledge of the matters set forth in this declaration and am competent to testify in this matter.

2. In my position, I oversee the work of scientists and others in our department to review the use of animals in experiments not required by government agencies; to provide information to our supporters, regulators, and the public about those experiments; and to review

1 the use of animals in those experiments for possible violations of the Animal Welfare Act
2 (“AWA”) or National Institutes of Health guidelines.

3 3. Holding the University of Washington (“UW”) accountable and educating the
4 public about UW’s activities are integral to these efforts. In large part, this is because UW,
5 through the Washington National Primate Research Center (“WaNPRC”), a department of UW,
6 oversees one of seven remaining “flagship primate centers” and, as a whole, receives billions of
7 dollars in federal funds that contribute toward experimentation on animals.

8 4. As required by federal law, UW has an Institutional Animal Care and Use
9 Committee (“IACUC”). As UW has acknowledged in a prior consent decree, the UW IACUC “is
10 a governing body of the University of Washington with respect to issues of the care, use, and
11 welfare of laboratory animals at the University of Washington.” A true and correct copy of that
12 consent decree is attached as **Exhibit A**. The UW IACUC, like all IACUCs, is charged with
13 overseeing the use of animals in experimentation at UW, reviewing proposed experimental
14 protocols involving the use of animals, and approving, rejecting, or requiring modification to
15 such protocols before any experiments can begin or significant changes to approved experiments
16 can be implemented.

17 5. PETA’s particular interest in the composition of the UW IACUC stems from a
18 number of factors.

- 19 a. First, under the supervision of the UW IACUC, UW has compiled a notably
20 egregious record for animal welfare—even by what PETA understands to be the
21 insufficient standards of the animal-experimentation industry. Public records,
22 including reports from federal inspectors routinely finding violations of the AWA,
23 show horrifying conditions for animals at UW—including, as documented in the
24 Inspection Report dated January 26, 2021, a true and correct copy of which is
25 attached as **Exhibit B**, that animals frequently suffer from incompetence and
26 neglect, including a monkey strangled to death when caught on a cage chain, as
27 well as monkeys dying from veterinary error, thirst, starvation, blood loss, and

1 choking on their own vomit, and monkeys being mauled by other monkeys. Last
 2 October, a lengthy exposé by the *Arizona Republic* detailed violations of state law
 3 and compromised science by UW, including sending apparently diseased
 4 monkeys to experimenters across the country, violating state animal-health and
 5 import regulations, operating without state oversight, failing to prevent the
 6 introduction and spread of deadly diseases among monkeys, and incurring
 7 repeated citations for violations of animal-welfare laws.

- 8 b. Second, the UW IACUC itself can be described, most generously, as consistently
 9 inert in failing to address chronic welfare issues in any meaningful way. For
 10 example, as documented in the Inspection Report dated July 14, 2015, a true and
 11 correct copy of which is attached as **Exhibit C**, inspectors with the United States
 12 Department of Agriculture (“USDA”), who are responsible for AWA
 13 enforcement, found the UW IACUC to be operating essentially as a
 14 rubberstamping entity because it approved major surgeries on animals even
 15 though the experimenters had not bothered to provide crucial information in the
 16 proposed protocols. In one such instance, non-human primates who were
 17 subjected to skull, arm, and vertebral implants experienced severe medical
 18 complications after the surgeries and had to be killed; among other missing
 19 critical information, the experimenter had not described the devices to be
 20 implanted or the size and location of incisions to be made. By way of further
 21 example, as documented in a letter dated May 11, 2021, a true and correct copy of
 22 which is attached as **Exhibit D**, the USDA informed UW that it would not grant
 23 UW’s appeal of citations of critical AWA violations because UW’s record of
 24 animal care—and, by implication, the UW IACUC’s record—“is not indicative of
 25 a facility that is demonstrating success at preventing critical animal welfare
 26 issues.” Specifically, the USDA had found that, between August 2019 and April
 27 2020, UW had committed critical AWA violations that caused injury to several

monkeys, including but not limited to an incident in which a monkey was left confined outside their regular enclosure without access to food or water for at least 12 hours. I have asked my colleagues and staff whom I supervise to review UW IACUC meetings, meeting agendas, and meeting minutes for any indication that the UW IACUC took meaningful measures in response. I understand that no such evidence exists, and that the UW IACUC, despite this incident appearing on its May 2020 and July 2020 meeting agendas, chose, as documented in the May 21 and July 20, 2020 UW IACUC Meeting Minutes, true and correct copies of which are attached as **Exhibit E**, at 3, 8, to instead stress “the importance of self-reporting instead of punitive actions held against individuals,” tabling discussion regarding steps as minimal as sending a letter to facility upper management. Likewise, neither I nor my staff has seen any indication that the UW IACUC was able to prevent issues described by the *Arizona Republic* or meaningfully, if at all, address them before or after publication.

- c. Third, the UW IACUC has itself engaged in direct misconduct on issues of extreme and urgent public interest. For example, as documented in **Exhibit F**, which is a true and correct copy of a set of emails produced by UW to PETA in response to a public records request, in November 2020, federal officials concluded that the head of the UW IACUC made “knowingly false” statements when she claimed during an IACUC meeting that experimentation on monkeys at WaNPRC helped create Moderna’s COVID-19 vaccine.

6. PETA has a good faith belief that these issues stem in significant part from UW having an illegally constituted IACUC that has failed to include a member not affiliated with the institution, as is required by the AWA, at 7 U.S.C. § 2143(b)(1) and 9 C.F.R. § 2.31(b), the Health Research Extension Act, at 42 U.S.C. § 289d(b)(2), and the Public Health Service

1 (“PHS”), at PHS Policy on Humane Care and Use of Laboratory Animals § IV.A.3.b,¹ or a
 2 “member whose primary concerns are in a nonscientific area,” as is required by the PHS, at PHS
 3 Policy on Humane Care and Use of Laboratory Animals § IV.A.3.b.

4 7. PETA understands that to meet the NIH’s definition of a nonaffiliated member,
 5 such an individual must not be “affiliated with the institution,” “an immediate family member of
 6 an individual affiliated with the institution,” such as the “spouse” of an affiliated individual, and
 7 must not be a “laboratory animal user or former user.” *See* Guidance on Qualifications of
 8 IACUC Nonscientific and Nonaffiliated Members, NIH, June 9, 2015.² NIH also states that an
 9 institution should confirm a nonaffiliated IACUC appointee “has no discernible ties or ongoing
 10 affiliation with the institution,” “must be assured that the person is not in any way obligated to
 11 the institution,” and “must” avoid “[r]eal or perceived conflicts of interest.” *Id.* With regard to a
 12 member designated as a nonscientist, NIH states that such an individual should “represent the
 13 general community interests in the proper care and use of animals,” bringing to the table “a naïve
 14 attitude with regard to science and scientific activities.” *Id.*

15 8. PETA’s belief that the UW IACUC fails to meet these legal requirements is based
 16 on a number of factors:

- 17 a. PETA understands that one UW IACUC member UW designates as
 18 “Unaffiliated” —whose identity PETA has confirmed through means described
 19 below—used laboratory animals in conducting experiments in relation to their
 20 published thesis and, from 2005 to 2015, was the director of an academic
 21 veterinary technician program that includes a laboratory-animal component. In
 22 PETA’s understanding, this member could not qualify as a nonaffiliated member.
- 23 b. PETA understands that another UW IACUC member UW designates as
 24 “Unaffiliated”—whose identity PETA has confirmed through means described

25 ¹ Available at <https://olaw.nih.gov/policies-laws/phs-policy.htm>.

26 ² Available at <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-109.html#:~:text=NOT%2DOD%2D15%2D109,IACUC%20Nonscientific%20and%20Nonaffiliated%20Members&text=This%20Notice%20provides%20guidance%20to,nonaffiliated%20members%20of%20the%20IACUC>.

below—is a former UW employee, extensively used laboratory animals while at UW, and is currently employed at a facility that conducts experimentation on animals in collaboration with UW. In PETA’s understanding, this member could not qualify as a nonaffiliated member.

- c. PETA understands that one UW IACUC member UW designates as “Unaffiliated”—whose identity PETA has confirmed through means described below—is the spouse of someone who was previously employed by UW and until March 2020 was employed by another organization that has received significant funding from UW, and, together with their spouse, is a consistent donor to UW. In PETA’s understanding, this member could not qualify as a nonaffiliated member.
- d. PETA understands that one UW IACUC member UW lists as a nonscientist—whose identity PETA has confirmed through means described below—is the Executive Director of an organization that advocates for biomedical research and that, according to its published disclosures, considers animal experimentation a critical component of biomedical research. In PETA’s understanding, this member could not legally qualify as a nonscientist.

9. I am aware that the UW IACUC has added new members since the IACUC consisted of members PETA was able to identify. PETA believes that UW’s history of improperly designating individuals as nonaffiliated and nonscientific supports a reasonable inference that the UW IACUC is not legally constituted.

10. I am also aware that UW has gone to significant lengths to hide the identities of these new members from PETA. For example, as documented in an email dated September 9, 2020, a true and correct copy of which is attached as **Exhibit G**, a member of my staff was told by UW, in response to a public records request for rosters of UW IACUC members that PETA is aware UW keeps in the ordinary course, that UW had taken the brazen measure of deleting rosters rather than preserving the content in these public records. UW has also not responded to attempts by PETA to respectfully request the names of new UW IACUC members through other

means, including during a July 15, 2021 UW IACUC meeting. PETA is currently engaged in litigation with UW based on PETA's understanding that UW's practice of maintaining a state governing body consisting of a secret membership is a clear violation of Washington's Open Public Meeting Act, which requires all meetings of state governing bodies to be open and public. RCW 42.30.030. PETA believes UW's efforts to improperly shield the UW IACUC from public scrutiny further lend themselves to reasonable inference that UW is hiding the fact that the UW IACUC is not legally constituted.

11. PETA believes that its inference is further supported by the fact that it is common for the membership of IACUCs at public universities to be publicly available. This is true both of other large public universities and of other public universities in Washington State.

12. PETA understands its belief that the UW IACUC is not legally constituted to be further supported by the fact UW has shown contempt for other legally binding NIH policy. For example, the NIH Grants Policy Statement, in Section 8.4.2, states that recipients of NIH grants "must retain financial and programmatic records, supporting documents, statistical records, and all other records that are required by the terms of a grant, or may reasonably be considered pertinent to a grant, for a period of 3 years from the date the annual [Federal Financial Report] is submitted." *See* NIH, Off. Of Extramural Rsch., NIH Grants Policy Statement § 8.4.2. The King County Superior Court, in an order on summary judgment in litigation between PETA and UW, entered on December 23, 2021, and since affirmed in a denial of a UW motion for reconsideration, found UW liable because UW's practice of deleting photos and videos from primate experiments—with exceptions made for photos and videos UW leadership considered suitable for public viewing—made it impossible for UW to comply with the Washington Public Records Act.³ Attached as **Exhibit H** are true and correct copies of the summary judgment and

³ PETA also has a reasonable belief that this practice further demonstrates UW's disregard for applicable law governing animal experimenters. RCW 16.010 makes it a felony offense to destroy public records. In a sworn affidavit, the former head of UW's primate center identified the applicable UW policy for photographs and videos taken in these laboratories, under which all such photographs and videos were considered public records.

1 reconsideration orders. Attached as **Exhibit I** are true and correct copies of deposition excerpts
 2 and a declaration of the former WaNPRC director.

3 13. It was because of UW's efforts to improperly shield the UW IACUC from public
 4 scrutiny, including its practice of deleting UW IACUC rosters, that PETA was forced to submit
 5 the public records requests at issue in this lawsuit. As acknowledged by UW and documented in
 6 an email dated September 8, 2020, a true and correct copy of which (as produced by UW) is
 7 attached **Exhibit J**, this is the only guaranteed way for PETA to access this information.
 8 Moreover, seeing these appointment letters would allow PETA to confirm which members of the
 9 UW IACUC are designated for specific member categories, including nonaffiliated and
 10 nonscientist membership categories.

11 14. PETA believes its inferences regarding the intent behind UW's efforts to
 12 improperly shield the UW IACUC from public scrutiny are further evidenced by UW's conduct
 13 with respect to the public records requests at issue in this litigation. PETA submitted public
 14 records request PRR-2021-000439, later denominated PRR-2021-000141, on June 24, 2021.
 15 Despite this being a simple request for emailed correspondence that UW presumably maintains
 16 in an easily accessible format, UW extended the response date on several occasions for more
 17 than half a year—until, it would seem, UW IACUC members were prepared to bring this lawsuit.

18 15. UW's responses to other public records requests submitted by PETA were
 19 similarly delayed. A request submitted on July 29, 2021, first denominated PR-2021-00528 and
 20 later denominated PR-2021-000105, sought a record providing the full name of a UW IACUC
 21 member whom PETA believes UW improperly designates as nonaffiliated. A request submitted
 22 on July 29, 2021, first denominated PR-2021-00529 and later denominated PR-2021-000093,
 23 sought all IACUC committee review packets, as well as protocols used by specific members
 24 whom PETA believes UW is improperly designating as nonaffiliated or nonscientist. A request
 25 submitted on September 15, 2021, first denominated PR-2021-00687 and later denominated PR-
 26 2021-000086, sought records documenting the UW IACUC composition and UW IACUC
 27 appointment letters not encompassed by the prior requests. All of these requests were extended

1 several times, during a period of several months, apparently until UW IACUC members were
2 prepared to bring this lawsuit.

3 16. PETA's intent in submitting these public records requests and seeking these
4 records is to investigate whether the UW IACUC is legally constituted. PETA does not seek this
5 information in order to publicize the identities of UW IACUC members. This would be
6 unnecessary because UW provided the names of almost all current members of the UW IACUC
7 to PETA on March 4, 2021 in response to public records request PR-2021-00033. True and
8 correct copies of that public records request, as well as documents produced in response to that
9 request (redacted only for the purpose of this submission by PETA in an abundance of caution
10 given the present litigation) are attached as **Exhibit K**. PETA also does not seek this information
11 in order to publicize the contact information of UW IACUC members. This would be
12 unnecessary because UW provided the email addresses of almost all current members of the UW
13 IACUC to PETA on March 4, 2021 in response to public records request PR-2021-00033, *see*
14 *id.*, as well as in a September 9, 2020 email from the UW Office of Public Records and Open
15 Public Meetings to a PETA employee, and again several times over in discovery produced by
16 UW without a protective order in litigation under the Washington Public Records Act in King
17 County Superior Court. True and correct copies of those documents (redacted only for the
18 purpose of this submission by PETA in an abundance of caution given the present litigation) are
19 attached as **Exhibit L**. Despite having all of this information for longer than the public records
20 requests at issue in this case were pending, PETA has not used it for any public purpose. This is
21 because PETA seeks this information to investigate whether or not the UW is legally constituted.

22 17. I am aware that, in this lawsuit, plaintiffs make several assertions regarding
23 incidents occurring during UW IACUC meetings. PETA employees attend, watch, and typically
24 record UW IACUC meetings. As a result, I have knowledge that plaintiffs' characterizations of
25 these incidents are highly misleading. For example, plaintiffs make a number of references to a
26 February 2022 incident in which "a member of the public who is a frequent speaker at meetings
27 compared the University of Washington to Auschwitz and suggested that members of the UW

IACUC employ the same practices as Nazis.” My understanding, however, is that the speaker in question is a former UW professor who, rather than insulting or threatening UW IACUC members, was respectfully referring to a famous remark by a refugee of Nazi Europe, Isaac Bashevis Singer, who won the Nobel Prize for literature in 1978 and wrote: “In relation to [animals], all people are Nazis. For [them], it is an eternal Treblinka.” A true and correct copy of a video recording of those comments is attached as **Exhibit M**. Likewise, I know, from watching the video myself, that the request made by one of my staff members during a UW IACUC meeting for identification of new IACUC members was made properly and respectfully during a public comment period. A true and correct copy of a video recording of that request and the UW IACUC’s response is attached as **Exhibit N**.

18. I also read the Declaration of P. Poe 1, in which this individual stated that they are “aware that members of other IACUC committees have had their pets kidnapped by persons who oppose animal research.” I am aware of no such incidents, and the statements attributed to P. Poe 1 provide no information whatsoever that I could use to substantiate the allegations one way or another.

19. Attached as **Exhibit O** is a true and correct copy of report by the *Arizona Republic*, saved and preserved in PDF format by my staff.

20. Attached as **Exhibit P** is a true and correct copy of UW’s production in response to PETA’s September 3, 2020 public records request. As can be seen, the roster provided does not identify the names of UW IACUC members.

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1 21. Attached as **Exhibit Q** is a non-exhaustive list compiled by my staff of other
2 colleges and universities whose IACUC members are not only non-anonymous, but revealed
3 prominently on those institutions' websites.

4 I declare under penalty of perjury under the laws of the United States of America that the
5 foregoing is true and correct.

6 Executed on this 30th day of March, 2022.

7 

8
9 _____
Kathy Guillermo